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No. 99-1169

In The

Supreme Court of the United States

NEW PRIME, INC. d/b/a PRIME, INC. and SUCCESS LEASING, INC.,

Petitioners,

v.

UNITED STATES OF AMERICA, FEDERAL HIGHWAY ADMINISTRATION, SECRETARY OF TRANSPORTATION, OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., HOWARD JENKINS, MARSHALL JOHNSON, SUSAN JOHNSON, and JERRY VANBOETZELAER,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF OF *AMICUS CURIAE* AMERICAN TRUCKING ASSOCIATIONS, INC. IN SUPPORT OF PETITIONERS NEW PRIME, INC., ET AL.

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QUESTION PRESENTED

When Congress passed the ICC Termination Act of 1995, and expressly provided for judicial enforcement of agency "orders," did it thereby intend to create a private right of action to enforce not just orders, but also regulations promulgated by the federal agencies that inherited the ICC's enforcement authority?

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INTEREST OF THE *AMICUS CURIAE*

American Trucking Associations, Inc. ("ATA") is the national trade association of the trucking industry.[1] Through 51 affiliated state trucking associations, located in every state and the District of Columbia, 14 nationally affiliated conferences, and over 2,000 individual motor carrier members, ATA represents over 34,000 motor carriers of every type, including for-hire carriers, private carriers, truck leasing companies, owner-operators, and others. Many of ATA's members have entered into or contemplated entering into truck leasing arrangements that are governed by the federal motor carrier leasing regulations promulgated by the Federal Motor Carrier Safety Administration ("FMCSA").[2] Because of the prevalence of truck leasing arrangements, it is critical that the

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[1] Pursuant to Rule 37.6 of the Rules of this Court, *amicus* states that this brief was not authored in whole or in part by counsel for a party, and no person or entity other than *amicus* or its members made a monetary contribution to the preparation or submission of this brief. Pusuant to Rule 37.2 of the Rules of this Court, the parties have consented to the filing of this brief *amicus curiae*. Their letters of consent have been filed with the Clerk of the Court.

[2] The rules were formerly under the Federal Highway Administration ("FHWA"). Many of the duties and responsibilities of the FHWA, including the provisions of the Act in question herein, were transferred to the FMCSA by Congress in the Motor Carrier Safety Improvement Act of 1999, Pub. L. 106-159 (December 12, 1999), effective January 1, 2000. For the purpose of this brief, *Amicus* will generally continue to refer to the agency as the FHWA.

federal regulations controlling these relationships be uniformly interpreted and enforced in a single forum. That forum, ATA submits, is the FMCSA.

From the standpoint of motor carriers, truck leases provide the operational flexibility needed to meet seasonal and demand fluctuations. Carriers can rapidly expand their fleets without massive capital investments and the administrative inconvenience associated with hiring employee drivers. In addition, some carriers have observed that independent owner-operators, because of their entrepreneurial incentives, are especially productive and reliable. *See generally,* David M. Maister, *Management of Owner-Operator Fleets,* 25-30 (1980).

Truck leasing is also advantageous from the owner-operators' standpoint. It permits independent owner-operators to control their own economic fate and to reap the savings produced by their efficiency and productivity. Owner-operators run their own businesses, monitor their own finances, work the hours and days they choose, select the equipment they operate, and ultimately control their own professional activities. Truck leasing creates opportunities and increased flexibility that these operators would not enjoy as employee drivers. Thus, owner-operators also have a vested interest in ensuring that the federal leasing regulations are consistently interpreted.

The success and well-being of the segment of the trucking industry that leases trucks from owner-operators depends in large part upon the consistent interpretation of the FHWA regulations governing the leasing relationship. ATA and its members believe that the Court of Appeals has jeopardized the practice of truck leasing

by improperly refusing to recognize FHWA's exclusive jurisdiction to enforce its leasing regulations. ATA and its members are concerned that the leasing regulations will not be construed uniformly by the federal district courts and that interstate motor carriers could thus be found in violation of the regulations by one court for the same conduct – for example, for the same provision of a carrier/owner-operator lease used for multi-state truck hauls – that is found to be in compliance by another court. This could greatly complicate and disrupt the interstate operations of tens of thousands of motor carriers nationwide. ATA, on behalf of its members, therefore, has a direct and substantial interest in the leasing issues presented in this matter.

REASONS FOR GRANTING THE PETITION

INTRODUCTION

A conservative estimate sets the number of owner-operators at 168,000 nationally.[3] Those tens of thousands of owner-operators may be leased to any of the more than 500,000 interstate motor carriers registered with the Department of Transportation.[4] Moreover, there is significant owner-operator turnover, with average per-company levels of approximately 20% per year. National Accounting and Finance Council, *1997 Managing Your Independent*

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[3] Martin Labbe Associates, *Owner-Operator Ranks to Grow*, Overdrive, November 1998, at 113.

[4] U.S. Department of Transportation, Federal Motor Carriers Safety Administration, *Fact Sheet*, www.fmcsa.dot.gov/factsfigs/mchsstats/factsheet.htm.

Contractor Fleet Study, 19-21 (1997). The prospect of even 1% of those owner-operators looking to the federal courts to interpret and enforce the federal leasing regulations would produce a litigation quagmire.

Congress in the Interstate Commerce Commission Termination Act ("ICCTA") simply transferred the well-understood, tested leasing rules enforcement procedures it had established for the ICC to the U.S. Department of Transportation. Under those procedures, a party claiming a violation of a leasing regulation must go first to the FHWA, the agency overseeing the regulations, to adjudicate their claim and then may bring a direct civil action in Court only to enforce any order thereafter made by the agency. The U.S. Court of Appeals for the Eighth Circuit's creation of a private right of action to directly pursue an alleged violation of a regulation upsets those procedures, causes substantial uncertainty, and is at odds with the decisions of other lower courts that have recognized the FHWA's appropriate initial role in the process.

The confusion in the lower courts, the disagreement between several courts and the agency over the scope of the agency's powers, and the importance of these issues to the trucking industry, the railroad industry, and other entities formerly under the ICC's jurisdiction, requires the Court's intervention.

ARGUMENT

THE COURT OF APPEALS ERRONEOUSLY CONSTRUED THE ICC TERMINATION ACT TO AUTHORIZE A PRIVATE RIGHT OF ACTION TO ENFORCE THE ESCROW PROVISIONS OF THE LEASING REGULATIONS

In its opinion, the Court of Appeals improperly relied upon the legislative history of the ICC Termination Act ("ICCTA") when the proper scope of the statute can be discerned from the statute itself. The plain intent of the Act was to vest in FHWA (now the FMCSA) mandatory and exclusive jurisdiction over all controversies involving the agency's regulations, and to provide limited private rights of action to enforce agency orders and to enjoin certain specified statutory violations.

It is well settled that the process of statutory construction must begin with the language of the statute itself. *Touche Ross & Co. v. Redington*, 442 U.S. 560, 568 (1979). The ICCTA, by its plain terms, permits only FHWA to obtain redress for violations of the agency's regulations through "appropriate action," including, if necessary, civil litigation. A private party, on the other hand, may sue to enforce the statute or an order – but *not* a regulation – of FHWA. Where, as here, Congress has enacted a comprehensive statute that unambiguously imposes certain enforcement duties upon the administering agency while leaving others to the discretion of private parties, a court should not invoke legislative history to defeat the plain intent of the statute. Instead, the process of statutory construction begins and ends with the statutory language itself. *See Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-254 (1992).

A. FHWA's Jurisdiction to Enforce Motor Carrier Regulations Is Mandatory

FHWA is charged with regulating motor carriers through enforcement of the provisions of Part B (Motor Carriers) of Title 49 of the United States Code. In carrying out its statutory mandate, FHWA is empowered to prescribe regulations consistent with Part B. *See* 49 U.S.C. § 13301(a). FHWA has the authority to investigate alleged violations on its own initiative or on the basis of a complaint filed with the agency. *See* 49 U.S.C. § 14701(a). In the event a violation is found, FHWA is obligated to "take appropriate action to compel compliance" with the statute and the agency's regulations. *See id.* The "appropriate action" contemplated by the statute includes the filing of a civil action under 49 U.S.C. § 14702 to enforce Part B or any "regulation or order" of FHWA.

The statute unambiguously prescribes that FHWA's jurisdiction is mandatory rather than permissive. *See* 49 U.S.C. § 14701(a) (providing that FHWA *"shall"* take appropriate steps to compel a motor carrier's compliance). The Interstate Commerce Commission ("ICC") recognized as much when, prior to the enactment of the ICCTA, it was charged with enforcing the leasing regulations governing common carriers. *See* Final Rules of the Interstate Commerce Commission, 47 Fed. Reg. 51,136, at 51,137 (1982) ("ICC Final Rules") (explaining that the Commission "will not institute civil actions for breach of contract on behalf of owner-operators[, but] [t]he Commission *will* * * * enforce these regulations and prosecute those carriers which violate the regulations") (emphasis added).

The mandatory wording of the statute itself directly contradicts the Court of Appeals' conclusion that legislative history authorizes private actions to enforce FHWA regulations. Contrary to the Court's holding, the statute's instruction that FHWA *"shall"* take appropriate steps to compel a motor carrier's compliance with its regulations (49 U.S.C. § 14701(a)) leaves the agency with no choice but to adjudicate motor carrier/owner-operator disputes involving the regulations.

B. FHWA's Jurisdiction to Enforce Motor Carrier Regulations Is Exclusive, and Private Parties Are Limited to Causes of Action Expressly Provided for in the Statute

FHWA's jurisdiction with respect to enforcement of the agency's motor carrier regulations is not only mandatory but also exclusive. While § 14704 of Title 49 expressly creates two private causes of action that may include recovery of damages, and one additional private cause of action that is limited to injunctive relief for statutory (but not regulatory) violations, none of these causes of action includes violations of the leasing *regulations*.[5]

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[5] The Court of Appeals' reading of § 14704(a)(2) to create a private right of action has no foundation. As the lower Court observed, the language of that section "is inconsistent [with] language used in the Termination's Act various enforcement provisions." The language of § 14702(a)(2) simply does not mention any right to bring a civil action. It only provides that "a carrier . . . is liable for damages sustained by a person as a result of an act or omission of that carrier . . . in violation of this part." The only plausible reading of that provision is that a person entitled to sue for violation of an agency "order" is entitled not

The first private cause of action that may result in a recovery of damages is available to parties who claim to have been injured by a carrier's violation of an *order* entered by FHWA. *See* § 14704(a)(1) (first sentence). As the Court of Appeals correctly recognized, if FHWA has not entered an order controlling the conduct of the carrier alleged to cause an injury, the aggrieved party has no private cause of action against that carrier under the first sentence of § 14704(a)(1). Instead, the only remedy available to such a party would be to file a complaint with FHWA. This is so because the statutory language expressly authorizes private parties to bring suit under § 14704(a)(1) to enforce an *order* – but not a *regulation* – of FHWA.

The second private cause of action that may result in an award of damages is an action to recover any amounts a carrier may have been charged in excess of the applicable tariff rate. *See* § 14704(b). A party claiming to be so aggrieved may institute a civil lawsuit or may elect to file a complaint with FMCSA pursuant to § 14701(b). *See* § 14704(c).

The only other private cause of action expressly authorized by § 14704 is the authorization of a private action to seek injunctive relief for violations of the specific provisions of §§ 14102 and 14103 – but ***not*** for the regulations issued thereunder. Under these provisions, for example, a private party could seek an injunction compelling the Secretary to initiate administrative or

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only to injunctive relief specified in § 14704(a)(1) but also to monetary damages caused by the violation of the order.

judicial proceedings to enforce compliance by a particular carrier with the regulations issued under § 14102. The Eighth Circuit's holding that the injunctive relief provided for in the second sentence of § 14704(a)(1) applies to regulations promulgated under § 14102 leaves a gaping hole in the private right of action supposedly created. As the Court of Appeals recognized, even if the injunctive relief authorized by § 14704 reaches the regulations issued under § 14102, that conclusion would not permit private enforcement of the leasing regulations at issue in this case, which are authorized by § 13301. Had Congress contemplated ***private*** enforcement of the motor carrier regulations – which in the aggregate span more than 375 pages of the Code of Federal Regulations, including numerous regulations authorized by § 13301 – surely it would have incorporated an express right of action in § 14704. *See generally, Vosch v. Werner Continental, Inc.*, 734 F.2d 149 (3d Cir. 1984) (holding that private plaintiffs could not state a cause of action for private enforcement of the motor carrier safety regulations).

Congress, in enacting § 14704, purposefully enabled private litigants to enforce violations of FHWA *orders* while vesting FHWA with exclusive jurisdiction to enforce its *regulations*. The omission of a private cause of action to enforce FHWA regulations was deliberate. "Nothing, indeed, but a different intent explains the different treatment." *Lindh v. Murphy*, 117 S.Ct. 2059, 2064 (1997).

C. The Court of Appeals Provided No Rational Basis for Overriding the Strong Presumption Against Recognition of Implied Causes of Action

The Court of Appeals recognition of an implied private cause of action under § 14704 disturbs the carefully allocated burdens of enforcement established by Congress and it ignores the strong presumption disfavoring the creation of implied remedies. Section 14704 is one of many enactments by which "Congress in regulating economic enterprise has divided the duty of enforcement between courts and administrative agencies." *See generally, United States v. Ruzicka*, 329 U.S. 287, 295 (1946). Congress enabled private parties to prosecute violations of *orders* issued by FHWA, leaving to the agency the task of determining whether there has been a violation of its regulations in the first place. Because the plain provisions of § 14704 do not permit private parties to enforce FHWA regulations, persons claiming to be aggrieved by a motor carrier's violation of a regulation must, as a preliminary step, petition FHWA for relief. *See Ruzicka*, 329 U.S. at 294 ("Congress has provided that the remedy in the first instance must be sought from the Secretary of Agriculture. It is on the basis of his ruling, and of the elucidation which he would presumably give to his ruling, that resort may be had to the courts.").

Well-established principles of statutory construction counsel against the recognition of an implied private cause of action where Congress has provided a comprehensive enforcement scheme. *See, e.g., Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 146 (1985) ("The

assumption of inadvertent omission is rendered especially suspect upon close consideration of ERISA's interlocking, interrelated, and interdependent remedial scheme, which is in turn part of a comprehensive and reticulated statute.") (internal quotation omitted). This Court has explained that "when legislation expressly provides a particular remedy or remedies, courts should not expand the coverage of the statute to subsume other remedies." *National R.R. Passenger Corp. v. National Ass'n of R.R. Passengers*, 414 U.S. 453, 458 (1974). Where, as here, the statute "creates a public cause of action for the enforcement of its provisions and a private cause of action only under very limited circumstances," *id.* at 458, the latter maxim compels the conclusion that the express remedies created by the statute are the exclusive means of enforcement, and do not include a private right of action for regulatory enforcement.

D. The Construction of the Predecessor of § 14704 (Former § 11705) Supports Enforcement of the Plain Meaning of the Statute

Section 14704 traces its roots to § 11705 of the former Interstate Commerce Act ("ICA"), which by its terms permitted a private right of action under certain circumstances against common carriers providing transportation under Subchapters I and III of the ICA (pertaining to rail carriers and pipelines, but not motor carriers).[6]

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[6] An express private cause of action against motor carriers similar to § 11705 was first recognized in 1995 with the enactment of ICCTA.

The history of § 11705 provides telling insights into the proper construction of the private right of action against motor carriers authorized by § 14704 because the provisions of the two sections are very similar. Furthermore, when § 14704 was enacted as part of the ICCTA, the language of former § 11705 survived nearly, but not completely, intact. Significantly, there are no reported cases construing former § 11705 to permit a private right of action to enforce agency *regulations* in advance of an agency determination of noncompliance.

Section 11705 was consistently interpreted to permit a private cause of action against a common carrier only *after* the ICC had evaluated the controversy and ordered certain relief. *See, e.g., Kraus v. Santa Fe S. Pac. Corp.*, 878 F.2d 1193, 1198-1199 (9th Cir. 1989) (holding that an ICC determination of liability is a jurisdictional prerequisite to the commencement of a private civil action); *De la Fuente v. Stokely-Van Camp, Inc.*, 514 F.Supp. 68, 78 (C.D. Ill. 1981). In the event a common carrier failed to tender the relief ordered by the ICC, a private party could bring suit under former subsection (b)(1) to recover a tariff overcharge, or under former subsection (b)(2) to obtain relief for damages sustained as a result of an act or omission of a carrier in violation of the statute. The district court in *De la Fuente* recognized that § 11705 was a carefully articulated enforcement scheme authorizing a private right of action only "when the Interstate Commerce Commission has ordered the payment of damages and the order has not been complied with by the carrier." 514 F.Supp. at 78. Furthermore, the court expressly rejected the suggestion that an implied right of action might also exist under § 11705 because "the instances in which a

private right of action are available are outlined with great specificity in the statute, [and] it seems highly improbable that Congress absentmindedly forgot to mention an intended private action." *Id.* at 78 (internal citations omitted).

The judiciary's refusal to recognize implied causes of action under § 11705 is instructive because the enforcement mechanisms expressly provided for in that section closely parallel those incorporated into its successor, § 14704. Aggrieved parties seeking private redress under the former § 11705 were limited to the remedies expressly provided for in that section and it is entirely appropriate that its successor, § 14704, be construed in the same narrow fashion. *See Central Bank v. First Interstate Bank,* 511 U.S. 164, 185 (1994) ("When Congress reenacts statutory language that has been given a consistent judicial construction, we often adhere to that construction in interpreting the reenacted statutory language.").

E. The Absence Of A Limitations Period in the Statute Shows That No Private Right of Action Was Created By Congress

49 U.S.C. § 14705 provides limitations periods for every cause of action under the Act,[7] setting out

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[7] Section 14705 proves only the following five limitations periods:

1. 18 months after accrual for a carrier to recover charges for transportation or services provided by the carrier (49 U.S.C. § 14705(a));

limitations periods for five separate causes of action. Significantly, that Section contains no limitations period for the alleged private right of action contemplated by the Court of Appeals in this matter. Rather, § 14705, like § 14704(a)(1), provides specifically that "a person must begin a civil action to enforce an order of the Board or Secretary against a carrier within 1 year after the date of the order." 49 U.S.C. § 14705(e). There is no mention of any limitations period for some general civil action to recover money damages for a violation of agency regulations.

This lack of an applicable limitations period has been recognized by courts to bar private actions under the Act to enforce agency regulations. In *DeBruce Grain v. Union Pacific R. Co.*, 983 F. Supp. 1280 (W.D. Mo. 1997), aff'd, 149 F.3d 787 (8th Cir. 1998), for example, the Court rejected a

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2. 18 months after accrual for a civil action to recover overcharges from a carrier (49 U.S.C. § 14705(b));

3. two years from accrual to file a complaint against a carrier for damages for exceeding the tariff rate under § 14704(b) (49 U.S.C. § 14705(c));

4. one year after the date of an order "to enforce an order of the Board or Secretary against a carrier" (49 U.S.C. § 14705(e));

5. three years for actions relating to transport for the United States Government. (49 U.S.C. § 14705(f)). No other limitations periods appear in the Act. There is specifically no limitations period for any kind of civil enforcement action other than the one-year period for enforcing an agency order set out in § 14704(e).

party's attempt to enforce an agency regulation, specifically noting the absence of an applicable limitation statute:

> The lack of a limitation period for the type of suit brought by Plaintiff is conspicuous and suggests that when Congress permitted "civil actions" under § 11704(b) (as provided in section 11704(c)), it meant to do so only with respect to an action to recover overcharges. To interpret § 11704(b) as broadly as Plaintiff suggests would leave Plaintiffs with no limitation period, which is an absurd result that Congress could not have intended.

DeBruce Grain, 983 F.Supp. at 1284 (citation omitted).

The Court in *Renteria v. K&R Transportation Co.*, Case No. CV98-290MRP (C.D. Cal. February 23, 1999) (which has been provided in the Appendix to Petitioner's Petition) relied on this same lack of a limitations statute in holding that the exact provisions now at issue did not authorize the broad private right of action recognized by the Eighth Circuit:

> The court in *DeBruce* put emphasis on the structure of the applicable statutes of limitations. The Act provides for a limitation period for civil actions to recover overcharges and for civil actions to enforce an order from the Board. *See* 49 U.S.C. §§ 11705, 14705. There is no provision governing the filing of a civil action for any other types of damages. If other actions for damages were allowed, plaintiffs would appear to have no limitations period, a result the *DeBruce* court dismissed as "absurd." Id. at 1284. This suggests Congress did not intend to

permit civil actions for damages for violations of regulations.

Slip Op. at 11.

CONCLUSION

The Court of Appeals erred in affirming the FHWA's decision.

First, the Court erred in concluding that regulations issued under § 14102 can be privately enforced pursuant to § 14704. Only statutory violations of §§ 14102 and 14103 can be privately enforced in the first instance. Violations of regulations can be privately enforced only after FHWA has first found a violation in an administrative process, and has ordered compliance. Moreover, the Court erred in not recognizing that if Congress had intended to create a new private cause of action as part of ICCTA, it would have established a statute of limitations as it did with other such causes under the Act.

The Court should grant certiorari to correct these errors.

Respectfully submitted,

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